UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	
MARTIN MELVIN FITERMAN,	BKY 99-42393
Debtor.	
JAMES LEVY, DAVID FURSETZER, and FURLEV SALES AND ASSOCIATES, INC., A MINNESOTA CORPORATION	ADV 99-4169
Plaintiffs,	
-v.-	FINDINGS OF FACT, CONCLUSIONS OF LAW,
MARVIN MELVIN FITERMAN,	ORDER OVERRULING CLAIM OBJECTION AND ORDER FOR
Defendant.	PARTIAL SUMMARY JUDGMENT

At Minneapolis, Minnesota, November 15, 1999.

The above entitled matter came on for hearing before the undersigned upon a claim objection filed by the Debtor in the bankruptcy case and a motion for summary judgment filed by the Plaintiff in the adversary proceeding. Scott Otero-Strouts appeared upon behalf of the Debtor/Defendant, and William Skolnick represented the Plaintiffs. Based upon the files and records of the proceedings herein, the affidavits, and the arguments of counsel, the Court makes the following:

FINDINGS OF FACT

1. Plaintiffs David Fursetzer and James Levy are former shareholders and officers of Plaintiff Furlev Sales and Associates, Inc.(“Furlev”), a Minnesota Corporation. Furlev was administratively dissolved as a corporation in October of 1991.

2. In 1980 Furlev commenced a law suit against the Debtor/Defendant Martin Fiterman ("Debtor") alleging that Debtor had intentionally and wrongfully procured the breach and termination of an employment contract between Furlev and North American Automotive Warehouse, Inc. ("North American") dated December 30, 1977.

3. Debtor had served as the attorney for North American during an attempt to sell the business to the Plaintiffs. When Plaintiffs rejected the proposed purchase price, Debtor told North American that he would purchase the business instead. Debtor did not want the Plaintiffs involved in the business following his purchase, so he attempted to negotiate a settlement with Plaintiffs in order to terminate their employment contract with North American. After reaching an oral agreement, Debtor announced that he did not plan on performing the settlement agreement. He further refused to allow Plaintiffs to continue to perform under the employment contract with North American and induced the owner of North American to concur in the refusal. Soon afterward, Debtor completed his purchase of North American.

4. The case was tried before a jury, and the court provided the jury with the following relevant instructions:

> Under the law, intentional procurement of a breach of contract means any act or conduct which slows, makes more difficult, or prevents performances of the contract committed with intent to cause that result. Intent to cause the breach is essential. If the defendant does not have the intent to procure breach of

> the contract, his conduct does not subject him to liability even if it has the unintended effect of causing a breach of the contract.

The jury also received instructions regarding the requirements for awarding punitive damages:

> A willful indifference is indifference that is deliberate and intentional and without regard to the rights of the person who is the subject of the willful indifference.
>
> . . .
>
> If you find that defendants' conduct directly caused injury to the plaintiff, and if you find the defendants' conduct was willful or malicious, and if you believe that justice requires it, you may in addition to any other damages which you find the plaintiff is entitled to receive award the plaintiff an amount which will serve to punish the defendant and deter others from the commission of like acts.

5. The jury returned a verdict in favor of the Plaintiffs on January 6, 1981, answering "yes" to the following questions on the special verdict form:

> Did [Debtor] wrongfully interfere with the contract dated December 30, 1977, between Furlev and North American?
>
> . . .
>
> Did [Debtor's] wrongful interference with the contract between Furlev and North American show, upon clear and convincing evidence, a willful indifference to the rights of Furlev?

The jury awarded $125,000 in compensatory damages and $75,000 in punitive damages. On September 10, 1981, the trial court entered judgment in accordance with the jury's verdict.

5. On appeal, the Minnesota Supreme Court affirmed the judgment in all respects as it related to the Debtor. The Court

found sufficient evidence to support each of the elements of the tort of wrongful interference with contractual relationships. In particular, the Court noted that the Debtor, while acting in his own person interests, intentionally procured the breach of the employment agreement between North American and Furlev without justification.

6. In February of 1991, Plaintiffs renewed the judgment against Debtor. Since that time Plaintiffs have engaged in continuing collection activities. In particular, they have made numerous requests for discovery and served Debtor's employer with at least 17 garnishment summonses.

7. Earlier this year, Debtor filed a motion in state court seeking an order that Plaintiffs lack the capacity to enforce the judgment. He alleged that, because Furlev had been dissolved in 1991, it no longer had standing to enforce the judgment. On April 5, 1999, Judge Catherine L. Anderson held that Debtor failed to object to all prior attempts to enforce the judgment and that Fursetzer and Levy, as former officers and shareholders, were lawfully asserting the judgment in the name of the dissolved corporation under Minn. Stat § 302A.783.

8. Despite the Plaintiffs efforts during the 18 years since the original judgment, the judgment remains largely unpaid. Including post-judgment interest, it totals $524,665.00. Interest continues to accrue on the judgment.

9. Debtor filed a Chapter 7 bankruptcy petition on May 3, 1999. Debtor objected to the claim filed by the Plaintiffs on the ground that they lacked the capacity to enforce the judgment. Plaintiffs filed a complaint, alleging in part that the judgment is nondischargeable in bankruptcy.

CONCLUSIONS OF LAW

I. Claim Objection

A proof of claim filed in a bankruptcy proceeding is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a) (1994); see Gran v. IRS (In re Gran), 964 F.2d 822, 827 (8th Cir. 1992); In re Oriental Rug Warehouse Club, Inc., 205 B.R. 407, 409 (Bankr. D. Minn. 1997). A properly filed proof of claim constitutes prima facie evidence of the validity and the amount of the claim. Fed. R. Bankr. P. 3001(f); see Oriental Rug, 205 B.R. at 409. If an objection is filed, the objector must come forward with evidence rebutting the claim or the claim will be allowed. See Gran, 964 F.2d at 827; Oriental Rug, 205 B.R. at 410. However, if the objecting party produces such evidence, the burden of proof shifts to the claimant to produce evidence of the validity of the claim. See Gran, 964 F.2d at 827; Oriental Rug, 205 B.R. at 410. "In other words, once an objection is made to the proof of claim, the ultimate burden of persuasion as to the claim's validity and amount rests with the claimant." Oriental Rug, 205 B.R. at 410 (citing In re Harrison, 987 F.2d 677, 680

(10th Cir. 1993); In re Allegheny Int'l, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992)).

Even a claim that is filed and objected to must be allowed unless it falls within the exceptions noted in § 502 of the Bankruptcy Code. 11 U.S.C. § 502(a) (1994). The most significant, and broadest, exception is that relied on by Debtor. A claim may not be allowed if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). Debtor maintains that the Plaintiffs' claim against him is unenforceable because the corporation that holds the judgment no longer exists.

While Debtor may have a valid argument in theory, I need not make that determination. The state court has already determined that Fursetzer and Levy, as former officers and shareholders of Furlev, may enforce the judgment on behalf of the corporation. Under the Rooker-Feldman doctrine I cannot review or reverse the state court's decision. Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983).

The Rooker-Feldman doctrine states that lower federal courts do not have subject matter jurisdiction over challenges to state court decisions in judicial proceedings. Fielder v. Credit

Acceptance Corp., 188 F.3d 1031, 1034 (8th Cir. 1999); Neal v. Wilson, 112 F.3d 351, 356 (8th Cir. 1997) (quoting Charchenko v. City of Stillwater, 47 F.3d 981, 983 (8th Cir. 1995)). The doctrine derives from the prohibition on federal appellate review of state court proceedings. Ferren v. Searcy Winnelson Co. (In re Ferren), 227 B.R. 279, 282-83 (B.A.P. 8th Cir. 1998) (citing Bechtold v. City of Rosemount, 104 F.3d 1062, 1065 (8th Cir. 1995)). Impermissible appellate review occurs in the lower federal courts whenever they entertain claims that are inextricably intertwined with those addressed in the state court. Id. at 283 (citing Snider v. City of Excelsior Springs, 154 F.3d 809, 811 (8th Cir. 1998); Goetzman v. Agribank, FCB (In re Goetzman), 91 F.3d 1173, 1177 (8th Cir. 1996)). Claims are inextricably intertwined if the relief requested in the federal action would effectively reverse the state court decision or void its ruling. Fielder, 188 F.3d at 1035; Neal, 112 F.3d at 356; Ferren, 227 B.R. at 283 (citing Bechtold, 104 F.3d at 1065; Charchenko, 47 F.3d at 983)). Thus, the Rooker-Feldman doctrine precludes a federal action if the federal challenge succeeds only to the extent that the state court wrongly decided the issues before it. Fielder, 188 F.3d at 1035; Neal, 112 F.3d at 356; Ferren, 227 B.R. at 283.

In applying the Rooker-Feldman doctrine, it is clear that sustaining the Debtor’s claim objection would required this court

to determine that the state court was wrong. Because I cannot reverse a state court decision, I must overrule the Debtor's claim objection.[1]

II. Motion for Partial Summary Judgment

Summary judgment is governed by Federal Rule of Civil Procedure 56, which is made applicable to this adversary proceeding by Bankruptcy Rule 7056. Federal Rule 56 provides:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

FED. R. CIV. P. 56(c). The moving party on summary judgment bears the initial burden of showing that there is an absence of evidence to support the nonmoving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). If the moving party is the plaintiff, it carries the additional burden of presenting evidence that establishes all elements of the claim. Id. at 325; United Mortg. Corp. v. Mathern (In re Mathern), 137 B.R. 311, 314 (Bankr. D. Minn. 1992), aff'd, 141 B.R. 667 (D. Minn. 1992). When the moving party has met its burden of production under Rule 56(c), the burden then shifts to the nonmoving party to produce evidence that would support a finding in its favor. Matsushita

[1] Debtor's argument may also be precluded by res judicata and/or collateral estoppel. However, because the Rooker-Feldman doctrine applies, I need not and will not decide these issues.

Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). This responsive evidence must be probative, and must "do more than simply show that there is some metaphysical doubt as to the material fact." Id. If the nonmoving party fails to come forward with specific facts showing that there is a genuine issue for trial, summary judgment is appropriate. Id. at 587; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-51 (1986).

Plaintiff's claim rests on § 523(a)(6) of the Bankruptcy Code, which excepts from discharge "any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6) (1994). In order for a debt to be excepted from discharge under § 523(a)(6), the creditor must prove as separate elements that the injury was both willful and malicious. Fischer v. Scarborough, 171 F.3d 638, 641 (8th Cir. 1999); Barclays American/Business Credit, Inc. v. Long (In re Long), 774 F.2d 875, 880-81 (8th Cir. 1985); Allstate Ins. v. Dziuk (In re Dziuk), 218 B.R. 485, 488 (Bankr. D. Minn. 1998).

As the Supreme Court recently clarified, "willful" requires proving that the actor intended the injury and did not merely intend the act that caused the injury. Kawaauhau v. Geiger, 523 U.S. 57, 118 S. Ct. 974, 977 (1998). This definition generally only includes those acts that fall within the category of intentional torts, as opposed to negligent or reckless torts.

Id. An intentional tort requires that the actor desire to cause the consequences of the act or believe that the consequences were substantially certain to result. Geiger v. Kawaauhau (In re Geiger), 113 F.3d 848, 852 (8th Cir. 1997)(citing Restatement (Second) of Torts § 8A (1965)), aff'd 118 S. Ct. 974 (1998).

In contrast, a malicious act under § 523(a)(6) is one that is "targeted at the creditor . . . at least in the sense that the conduct is certain or almost certain to cause . . . harm." Long, 774 F.2d at 881; see also Johnson v. Miera (In re Miera), 926 F.2d 741, 743-44 (8th Cir. 1991). Circumstantial evidence can be used to ascertain whether malice existed. Miera, 926 F.2d at 744.

Accordingly, to prevail under § 523(a)(6), Plaintiff must show by a preponderance of the evidence, Miera, 926 F.2d at 744 n.5, (1) that he suffered an injury as a result of an intentional tort ("willful"); and (2) that Defendants' actions were targeted at him ("malicious"). Dziuk, 218 B.R. at 488; DLC Investments v. Nielsen (In re Nielsen), 1998 WL 386384, at *4 (Bankr. D. Minn. 1998).

Plaintiffs rely, at least in part, upon collateral estoppel to prove the necessary elements of their § 523(a)(6) action. Because Plaintiffs are relying on a state court judgment, the court must apply the principles of collateral estoppel used in Minnesota state courts. Fischer, 171 F.3d at 641; Dziuk, 218

B.R. at 488-89; Nielsen, 1998 WL 386384, at *5; North Tel, Inc. v. Brandl (In re Brandl), 179 B.R. 620, 623 (Bankr. D. Minn. 1995). Under Minnesota law, collateral estoppel precludes the relitigation of factual issues that are both identical to issues already litigated by the parties in a prior action and necessary and essential to the resulting judgment. Ellis v. Minneapolis Comm'n on Civil Rights, 319 N.W.2d 702, 704 (Minn. 1982) (emphasis added). Collateral estoppel applies when: (1) the issue was identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue. Care Inst., Inc. v. County of Ramsey, 576 N.W.2d 734, 737 (Minn. 1998); Northwestern Nat'l Life Ins. Co. v. County of Hennepin, 572 N.W.2d 51, 53-54 (Minn. 1997).

The second, third, and fourth elements of collateral estoppel are easily met: The state court entered a final judgment on September 10, 1981; Debtor was a party to the prior action; and he had a full and fair opportunity to be heard on the litigated issue, including an appeal to the Minnesota Supreme Court.

Remaining, then, is whether the issue in this case is identical and necessary to the findings in the prior

adjudication. Debtor admits that a finding of willfulness is identical and necessary to the jury's finding that he intentionally procured the breach of the employment contract. Thus, the Plaintiffs have established the first element of a § 523(a)(6) claim -- that they suffered an injury as a result of an intentional tort. That leaves only the question of whether the Debtor's actions were targeted at the Plaintiffs, i.e., that the injury was malicious. I can only conclude that maliciousness is also identical and necessary to the jury's findings. The jury found that the Debtor wrongfully interfered with the contract. Such wrongful interference could only be targeted at the Plaintiffs, at least in the sense that the interference was certain or almost certain to cause them harm. See Miera, 926 F.2d at 743-44. The only other party to the contract agreed to the interference and, thus, could not have been the target for harm.

Debtor suggests that I follow my prior decision in Nielsen, in which I found that collateral estoppel did not apply in a § 523(a)(6) action. Nielsen, 1998 WL 386384, at *6. That case involved an entirely different cause of action, slander of title. I found that a finding of liability for the tort of slander of title did not necessarily require a finding of willfulness. Id. In contrast, willfulness is admitted in this case. I further found in Nielsen, as I do today, that the jury found the conduct

to be targeted at the Plaintiffs. Unlike the Nielsen case, therefore, the jury's findings in this case establish both elements of § 523(a)(6), and collateral estoppel applies.

This leaves the question of the dischargeability of the punitive damages. The Eighth Circuit recently held that where the compensatory and punitive damages are based upon the same conduct, and the judgment for compensatory damages is nondischargeable because it is based on a willful and malicious injury to another, then the punitive damages award is likewise nondischargeable. Fischer v. Scarborough (In re Scarborough), 171 F.3d 638, 644 (8th Cir. 1999). Accordingly, the punitive damages in this case, which were based on the same conduct as the compensatory damages, are also nondischargeable.

As there are no material facts in dispute and Plaintiffs are entitled to judgment as a matter of law, I will enter summary judgment in favor of Plaintiffs declaring nondischargeable the judgment against the Debtor in the amount of $524,665.00 plus interest.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. Debtor's objection to Plaintiffs' claim is OVERRULED;

2. Debtor's debt to Plaintiffs in the amount of $524,665.00, plus interest, is excepted from Debtor's discharge pursuant to 11 U.S.C. § 523(a)(6);

3. There being other issues pending in the case and no justification for making the express determination and direction required by Bankruptcy Rule 7054, applying Federal Rule of Civil Procedure 54(b), judgment shall not be entered at this time.

_____
Nancy C. Dreher
United States Bankruptcy Judge